



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

March 10, 1993

Honorable Bill Sims
Chairman
Natural Resources Committee
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 93-18

Re: Whether a court may assess fees and
court costs in a proceeding under V.T.C.S.
article 6701d, section 143A, subsection
(a)(1) (RQ-475)

Dear Senator Sims:

You raise several questions about V.T.C.S. article 6701d, section 143A. In essence, you ask whether a court may impose fees and court costs in a proceeding under subsection (a)(1) of this provision. Section 143A of article 6701d provides for the dismissal of certain misdemeanor driving offenses upon the completion of a driving safety course. It provides in pertinent part:

(a) When a person is charged with a misdemeanor offense under this Act . . . the defendant shall be advised by the court of his right to successfully complete a driving safety course and the court:

(1) in its discretion may defer proceedings and allow the person 90 days to present a uniform certificate of course completion as evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course . . . ; or

(2) shall defer proceedings and allow the person 90 days to present a uniform certificate of course completion as written evidence that, subsequent to the alleged act, the person has successfully completed a driving safety course . . . if:

(A) the person enters a plea in person or in writing of No Contest or Guilty and presents to the court an oral request or a written request, in person or by mail . . . to take a course;

(B) the court enters judgment on the person's plea of No Contest or Guilty at the time the plea is made but defers imposition of the judgment for 90 days;

....

(b) When the person complies with the provisions of Subsection (a) of this section and a uniform certificate of course completion is accepted by the court, the court shall remove the judgment and dismiss the charge, but the court may only dismiss one charge for completion of each course.

....

(c) The court may require the person requesting a drivingsafety course to pay a fee set by the court in an amount that does not exceed \$10

....

In addition to the fee set forth in subsection (c), the Code of Criminal Procedure sets forth court costs for persons convicted under article 6701d. *See* Code Crim. Proc. §§ 102.015 (court costs remitted to general revenue fund), 102.051 (court costs remitted to criminal justice planning fund), 102.081 (court costs remitted to comprehensive rehabilitation fund).

This office considered the constitutionality of the fee set forth in subsection (c) of this provision and court costs set forth in section 102.051 of the Code of Criminal Procedure in Attorney General Opinion JM-1124 (1989). That opinion concluded that a court may assess that fee and other court costs in a proceeding under subsection (a)(2), but that the imposition of fees or court costs in a proceeding under subsection (a)(1) would be unconstitutional. This conclusion turned on a key difference between the two provisions. While the procedure set forth under subsection (a)(2) required the defendant to enter a guilty plea and for the court to enter judgment on the plea, the procedure set forth in section (a)(1) did not appear to require either a plea, an entry of a judgment, or an application for deferral by the defendant. Attorney General Opinion JM-1124 (1989) at 5-7.

The opinion concluded that the imposition of fees or court costs without a plea, judgment, application or any other adjudication of guilt was unconstitutional: "We believe that to allow court costs to be assessed upon the basis of a statutory assumption of guilt of a defendant under these circumstances is to deprive the defendant of property without due process of law. Such a procedure allows a conviction to be entered against a defendant without having afforded the defendant his constitutional right to a trial." *Id.* at 7; *see also id.* at 9 (concluding that imposition of fee under article 6701d, section 143A, subsection (c) in a proceeding under subsection (a)(1) would be unconstitutional); Attorney General Opinion JM-917 (1988) (concluding that a law which requires a defendant to pay a fee in order to obtain the dismissal of a criminal charge of which he or she is innocent violates the Texas Constitution). Since Attorney General Opinion JM-1124 was rendered in 1989, there has been no legislation to clarify that a plea or judgment is necessary under subsection (a)(1). You do not appear to question that opinion's constitutional analysis.

Therefore, we see no reason to revisit Attorney General Opinion JM-1124, and will abide by its conclusions.

We respond to each of your questions in turn, addressing your first and second questions together. You ask if "a plea [is] entered or taken in a case handled under . . . 143A, subsection (a)(1)," and if "a judgment [is] entered at the time the proceedings are deferred under . . . subsection (a)(1)." As this office concluded in Attorney General Opinion, JM-1124, subsection (a)(1) does not appear to require that a plea be entered or taken or that a judgment be entered. The memorandum submitted with your request points out that subsection (b) states that "[w]hen a person complies with the provision of subsection (a) of this section . . . the court shall remove the judgment and dismiss the charge" It appears to suggest that subsection (b) reflects the legislature's intent that a judgment must be rendered under subsection (a)(1). We disagree. Subsection (b) can be read to require a court to remove judgment whenever a judgment has been entered. It does not require a court to impose a judgment when acting within its discretion under subsection (a)(1).

You also ask whether "the deferral is considered a final conviction for the purpose of assessing court costs under subsection (a)(1), and, if so, then under what statutory authority." The memorandum submitted with your request cites to sections 102.015, 102.051, and 102.081 of the Code of Criminal Procedure. Each of these provisions imposes court costs on defendants convicted of certain offenses. Section 102.081, for example, imposes court costs in the amount of \$5.00 on defendants convicted of offenses under article 6701d for a comprehensive rehabilitation fund. Each of these provisions contains the following language: "In this article, a person is considered to have been convicted in a case if . . . the court defers final disposition of the case." Code Crim. Proc. §§ 102.015(d), 102.051(f), 102.081(d).

The memorandum suggests that "[p]aying proper regard to these sections would mandate the assessment of court costs." Again, we disagree. As noted above, this office expressly considered this language in section 102.051(f) of the Code of Criminal Procedure as it applies to a proceeding under subsection (a)(1) in Attorney General Opinion JM-1124. That opinion concluded that such a statutory assumption of guilt is unconstitutional. Attorney General JM-1124 at 7. This conclusion applies with equal force to the statutory presumption in sections 102.015(d) and 102.081(d) of the Code of Criminal Procedure.

With respect to the fee set forth in subsection (c) of article 6701d, section 143A, we note that the foregoing Code of Criminal provisions state that a person is considered to have been convicted if the court defers final disposition of the case for the specific purposes of the court costs set forth in each particular statute. See Code Crim. Proc. §§ 102.015(d), 102.051(f), 102.081(d) (each of which begins "[i]n this article"). These provisions are simply not relevant to whether the deferral of proceedings under subsection (a)(1) of section 143A constitutes an adjudication of guilt for purposes of the \$10.00 fee set forth in subsection (c) of that provision. As noted above, this office concluded in

Attorney General Opinion JM-1124 that the imposition of the \$10.00 fee under subsection (c) in a proceeding under subsection (a)(1) would be unconstitutional. See Attorney General Opinion JM-1124 at 9.

S U M M A R Y

A court may not impose fees and court costs in a proceeding under V.T.C.S. article 6701d, section 143A, subsection (a)(1).

Yours very truly,

A handwritten signature in black ink, reading "Mary R. Crouter". The signature is written in a cursive, flowing style.

Mary R. Crouter
Assistant Attorney General
Opinion Committee